

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TERRY RAY COLEMAN,)	No. C 11-5728 LHK (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	WITH LEAVE TO AMEND
v.)	
)	
COUNTY OF SAN MATEO, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, an inmate at Maguire Correctional Facility, proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff's motions for leave to proceed in forma pauperis are granted in a separate order. For the reasons stated below, the Court dismisses the complaint with leave to amend.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*

1 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

2 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
3 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
4 statement need only ““give the defendant fair notice of what the . . . claim is and the grounds
5 upon which it rests.”” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
6 Although in order to state a claim, a complaint “does not need detailed factual allegations, . . . a
7 plaintiff’s obligation to provide the ‘grounds of his ‘entitle[ment] to relief’ requires more than
8 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
9 do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.”
10 *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
11 complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.*
12 at 1974.

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
14 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
15 the alleged violation was committed by a person acting under the color of state law. *See West v.*
16 *Atkins*, 487 U.S. 42, 48 (1988).

17 B. Legal Claims

18 In his complaint, Plaintiff alleges that Detective Sergeant Linda Gibbons spoke with him
19 at San Quentin State Prison, but did not contact probate, and released his deceased wife’s body
20 to the San Mateo County Coroner’s office. Plaintiff further complains that the coroner’s office
21 released his wife’s body to her sister, even though Plaintiff is the next of kin. Plaintiff also
22 alleges that the coroner’s office allowed his wife’s sister to sign the death certificate without his
23 consent. Plaintiff finally argues that the County of San Mateo’s Sheriff’s Department, and the
24 County of San Mateo are responsible for training and supervising Gibbons and other San Mateo
25 employees.

26 As presented, it is unclear what federal constitutional rights Plaintiff believes that
27 Defendants violated. Plaintiff must state “enough facts to state a claim for relief that is plausible
28 on its face.” *Twombly*, 127 S. Ct. at 1974. To state a claim arising under federal law, it must be

1 clear from the face of Plaintiff's complaint that there is a federal question. *See Easton v.*
 2 *Crossland Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997). Further, Plaintiff's allegations
 3 against the County of San Mateo are insufficient. To impose municipal liability under § 1983 for
 4 a violation of constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a
 5 constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3)
 6 that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4)
 7 that the policy is the moving force behind the constitutional violation. *See Plumeau v. School*
 8 *Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997).

9 Plaintiff will be given an opportunity to amend his complaint, and set forth facts
 10 sufficient to state a federal constitutional claim, if he can do so in good faith. In his amended
 11 complaint, Plaintiff must "set forth specific facts" regarding what Defendants did that violated
 12 his federal constitutional rights. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988).

13 To the extent Plaintiff alleges that Gibbons defamed him, such an assertion fails to state a
 14 cognizable claim. *See Paul v. Davis*, 424 U.S. 693, 701-710 (1976) (recognizing that defamation
 15 alone does not state a constitutional claim, even when done under color of state law).
 16 Accordingly, Plaintiff's defamation claim will be DISMISSED without leave to amend.

17 CONCLUSION

18 1. Plaintiff's defamation claim is DISMISSED without leave to amend. The
 19 remainder of Plaintiff's complaint is DISMISSED WITH LEAVE to amend.

20 2. Plaintiff shall file an AMENDED COMPLAINT within **thirty days** from the date
 21 this order is filed to cure the deficiencies described above. The amended complaint must include
 22 the caption and civil case number used in this order (C 11-5728 LHK (PR)) and the words
 23 AMENDED COMPLAINT on the first page. Plaintiff may not incorporate material from the
 24 prior complaint by reference. **Failure to file an amended complaint within thirty days and in**
 25 **accordance with this order will result in dismissal of this action.**

26 3. Plaintiff is advised that an amended complaint supersedes the original complaint.
 27 "[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged
 28 in the amended complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

1 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

3 4. It is the Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
4 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
5 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
6 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule
7 of Civil Procedure 41(b).

8 IT IS SO ORDERED.

9 DATED: 4/9/12


LUCY H. KOH
United States District Judge